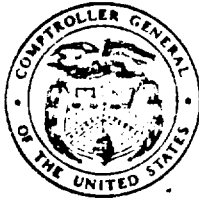


DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-212427

DATE: November 29, 1983

MATTER OF: Robert W. Webster - Attorney's Fee for
Construction Contract

DIGEST:

An employee incurred an attorney's fee for closing on a lot on which he built his residence, and another attorney's fee for a construction contract for that residence. The Federal Travel Regulations limit reimbursement to expenses comparable to those reimbursable in connection with the purchase of existing residences and does not include expenses which result from construction. Since the attorney's fee for the construction contract was incurred because he chose to build a residence as opposed to purchasing an existing one, and since he has already been reimbursed an attorney's fee for closing on the lot, he may not be reimbursed the fee for the construction contract.

Mr. John W. Rice, Jr., Chief, Financial Management Office, John F. Kennedy Space Center, National Aeronautics and Space Administration (NASA), has requested a decision as to whether Mr. Robert W. Webster is entitled to reimbursement of an attorney's fee for development and execution of a contract for the construction of his residence. Since the fee was an extra expense incurred because Mr. Webster contracted to have a residence constructed, as opposed to purchasing an existing home, and since Mr. Webster has already been reimbursed an attorney's fee for closing costs on the lot on which his residence was built, he may not be reimbursed for this expense.

Mr. Webster transferred from the Naval Air Station, Patuxent River, Maryland to NASA, John F. Kennedy Space Center, Florida, and entered into a contract on June 12, 1981, for the purchase of a lot. The settlement date for the purchase of the lot was September 29, 1981. Mr. Webster

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also entered into a construction contract on August 19, 1981, for the construction of a single family home. Mr. Webster secured financing for a construction loan with a proviso that at the end of construction the loan would be rolled over as a permanent loan.

Mr. Webster claimed reimbursement for a \$200 attorney's fee incident to the closing on the lot, and also a \$300 attorney's fee, 3.6 hours at \$85 per hour, for services rendered in connection with the development and execution of the construction contract.

The attorney's fee for the closing on the lot was paid by NASA, but reimbursement for the attorney's fee for development and execution of the construction contract was denied.

The Certifying Officer disallowed the expense for the attorney's fee for services rendered in connection with the construction contract because this expense was not comparable to expenses that are reimbursable in connection with the purchase of an existing residence. The certifying officer's opinion is that this expense is peculiar to and specifically relates to the construction process. He explains in the submission that:

"In the purchase of an existing residence, the normal contract that is executed is the 'Contract for Sale and Purchase' as used by Mr. Webster in the purchase of the lot. This contract contains the Standards for Real Estate Transactions as required by the Florida Statute and provide for any special clauses or addenda that may be added by buyer and/or seller. It would be extremely rare for the purchase of an existing residence to require an eight-page contract or 3.6 hours for an attorney to develop and execute.

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"Mr. Webster's claim for \$200.00 for the attorney's fee for closing costs on the lot has been paid. The attorney's fee was paid to the same attorney that developed and executed the construction contract. In the review of claims paid for the past year for employees who transferred to NASA, Kennedy Space Center, the attorney's fee for closing costs for employee(s) who purchased an existing residence has ranged below \$300.00."

Mr. Webster, on the other hand, states that the attorney's fee for services rendered in the development and execution of the construction contract is very reasonable and is comparable to expenses that are reimbursable in connection with the purchase of an existing residence.

Paragraph 2-6.2d of the Federal Travel Regulations FPMR 101-7 (May 1973) (FTR) states in pertinent part:

"In cases involving construction of a residence, reimbursement of expenses would include those items of expense which are comparable to expenses that are reimbursable in connection with the purchase of existing residences and will not include expenses which result from construction."

Under the above regulation, if an employee would not have incurred an expense but for the fact he had a residence constructed, reimbursement for such expense may not be allowed. B-164491, August 20, 1968. Although a contract is required for the purchase of a residence, it is evident that the \$300 attorney's fee for this construction contract was a cost which would not have been incurred had Mr. Webster purchased an existing residence. Rather, the \$300 attorney's fee resulted solely from and was incident to the construction of Mr. Webster's residence. The prior \$200 attorney's fee which arose in connection with the purchase of the lot on which Mr. Webster built is properly reimbursable. That fee is more akin to what Mr. Webster would have incurred had he purchased an existing residence.

In view of the above, and since Mr. Webster has already been reimbursed attorney's fees for closing costs incident to the purchase of the lot, he may not be reimbursed the extra \$300 attorney's fee.

Although it is not raised in the submission we note that two recording fees, one for the purchase of the lot and one for the construction of the new residence, of \$4 each, were reimbursed. Under paragraph 2-6.2d of the FTR, quoted above, expenses which result from construction of a residence may not be reimbursed. Since Mr. Webster has been reimbursed the recording fee for the purchase of the lot, he cannot also be reimbursed the recording fee for construction of his new residence as that fee results from construction.

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See Wesley J. Lynes, B-182412, April 18, 1975. Accordingly, the recording fee for construction of the new residence should be recouped.

Milton J. Fowler
for Comptroller General
of the United States